

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 23 August 2010**

**Public Authority:** Lincolnshire County Council  
**Address:** County Offices  
Newland  
Lincoln  
LN1 1YL

### Summary

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The complainant requested details of the statutory enactment and clause that permits restraint under a community care order and social services care plan. Lincolnshire County Council (the Council) applied the exemption contained at section 21 of the Freedom of Information Act 2000 as the requested information is readily available on [www.opsi.gov.uk](http://www.opsi.gov.uk). The Commissioner has concluded that section 21 is not engaged as the Council did not precisely direct the complainant to the information requested. The Commissioner therefore upholds the complaint in this case but does not require the Council to take any further action.

### The Commissioner's Role

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

### The Request

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2. On 15 January 2009 the complainant requested several pieces of information from Lincolnshire County Council (the Council) including the following information:

*".....supply within 21 days the precise 'statute' and 'clause' that these 'entities' are relying upon as cited as a defence of their actions which permits this trespass to the person, confinement, and false imprisonments with the [.....address redacted]....."*

3. The Council replied in a letter dated 20 January 2009; however they failed to respond to the request quoted above.
4. The complainant wrote to the Council again on 6 February 2009 requesting a review of its initial response, in this letter the complainant also stated the following:

*".....we demand yet again under the FOIA that Lincolnshire County Council state and disclose under what specific \*Statute and Clause [\*legal order] do Amara Care Ltd/Pat Frankish Associates and Lincolnshire County Council restrain and or imprison [.....redacted.....] or any other individual in receipt of Lincolnshire County Council Social Services Community Care and Funding....."*

5. In a letter dated 31 March 2009 the Council upheld its initial response in relation to the points it had previously responded to but again failed to respond to the request quoted in paragraph 2 and clarified in paragraph 4 above. The Council also referred to a letter from it to the complainant dated 30 March 2009; this letter directed the complainant to the Lincolnshire Multi Agency Safeguarding of Vulnerable Adults Policy and Procedural Guidance but did not advise the complainant how to obtain a copy.
6. There was a continual chain of correspondence between the Council and the complainant; however the request above was never answered by the Council.

## **The Investigation**

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### **Scope of the case**

7. On 2 July 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following:

"Lincolnshire County Council refuses to provide the precise particulars of the Statutory Enactment and Clause that permits "restraint under a Community Care Assessment and Social Services Care Plan" despite

being requested to do so under a FOI Act request. [The precise Enactment and Clause provides the Jurisdiction and Administrative Power to discharge the Duty to restrain without which the exercise of restraint under a Community Care Assessment and Social Services Care Plane would be unlawful]

We would like the Information Commissioner to obtain that specific Statutory Enactment and Clause that Lincolnshire County Council Social Services and their contractors are relying upon to restrain [initials redacted].

8. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

### **Chronology**

9. On 14 October 2009 the Commissioner telephoned the Council to ask it why it had not responded to the complainant's request for the specific statute and clause initially requested in his letter of 15 January 2009, and repeated with clarification in a further letter dated 6 February 2009. The Council acknowledged that it had been an oversight on its part and advised the Commissioner that it would respond to the complainant.
10. In a letter dated 15 October 2009 the Council wrote to the complainant stating that information contained within Acts of Parliament, Regulations or other Statutory Instruments relating to Adult Social Care is already available to the public. However, the Council failed to precisely direct the complainant to the specific information requested. The Council informed the complainant that this type of information can be accessed via the Office of Public Sector Information from their website [http://www.opsi.go.uk/legislation/about\\_legislation](http://www.opsi.go.uk/legislation/about_legislation). The council stated that the information requested was therefore exempt by virtue of the exemption contained at section 21.

### **Analysis**

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11. The full text of the relevant provisions of the Act referred to in this section is contained within the legal annex.

### **Exemption**

Section 21 – Information accessible to the applicant by other means

12. Section 21 provides that information which is reasonably accessible to the applicant is exempt information.
13. The Council failed to state which specific statute and clause permits it to carry out restraints on vulnerable adults. Instead it referred the complainant to one of its own documents, as quoted in paragraph 5, and to [www.opsi.gov.uk](http://www.opsi.gov.uk). However, the Council did not provide the complainant with the specific details of the statute and clause requested, nor did it provide a specific link to the requested information.
14. The Commissioner undertook searches of the Council's website and [www.opsi.gov.uk](http://www.opsi.gov.uk), he has viewed the information withheld above and is satisfied that this information is available from both the Council's website:

[http://www.lincolnshire.gov.uk/upload/public/attachments/1160/making\\_decisions\\_a\\_guide\\_for\\_people\\_who\\_work\\_in\\_health\\_and\\_social\\_care.pdf](http://www.lincolnshire.gov.uk/upload/public/attachments/1160/making_decisions_a_guide_for_people_who_work_in_health_and_social_care.pdf)

And the OPSI website:

[http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/2005/cukpga\\_20050009\\_en\\_1](http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/2005/cukpga_20050009_en_1)

15. The Commissioner accepts that information is reasonably accessible if the public authority:
  - knows that the applicant has already found the information; or
  - is able to precisely direct the applicant to the information. In this case the public authority has to be reasonably specific to ensure it is found without difficulty and not hidden within a mass of other information.
16. The Commissioner therefore finds that although the information is reasonably accessible via the links at paragraph 14 above, section 21 is not engaged as the Council failed to precisely direct the applicant to the information. The Council, by simply referring the complainant to a web site without specifying which Act and clause was relevant to his request, did not provide the complainant with enough information to find the requested information without difficulty. The Council should have advised the complainant that the relevant act and clause was section 5 of the Mental Capacity Act 2005. In addition, a summary of the Mental Capacity Act can be found at the following link:

<http://www.dca.gov.uk/legal-policy/mental-capacity/mca-summary.pdf>

## **Procedural Requirements**

### **Section 10(1) – time for compliance**

17. The Commissioner has considered whether the Council dealt with the complainant's request for information on time.
18. Section 10(1) provides –  
  
"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."
19. The complainant made his request for information on 15 January 2009. The Council has stated that it received this request on 19 January 2009. The twentieth working day following the date of receipt was therefore 16 February 2009. The Council provided an initial response dated 30 March which referred the complainant to the Council's own guidance however a refusal notice citing the exemption contained at section 21 was not issued until 15 October 2009. It has therefore breached section 10(1) by complying with section 1(1) late.

### **Section 17 – Refusal of Request**

20. The Commissioner has considered whether the Council complied with the requirements of section 17 of the Act when issuing the complainant with its refusal notice dated 15 October 2009.
21. Section 17(1) provides that –  
  
"A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -
  - (a) states that fact,
  - (b) specifies the exemption in question, and
  - (c) states (if that would not otherwise be apparent) why the exemption applies."
22. As described at paragraph 38 above, the public authority responded to the complainant late. It has therefore breached section 17(1) of the

Act by failing to issue the complainant with a refusal notice within twenty working days following the date of receipt of the request.

## **The Decision**

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23. The Commissioner's decision is that the public authority did not deal with the request in accordance with the Act in that it:
- breached section 10(1);
  - breached section 17(1); and
  - failed to engage section 21 by failing to provide the specific links or precisely direct the complainant to the information requested

## **Steps Required**

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24. The Commissioner requires no steps to be taken.

## Right of Appeal

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25. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
Arnhem House,  
31, Waterloo Way,  
LEICESTER,  
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

**Dated the 23<sup>rd</sup> day of August 2010**

**Signed .....**

**Rachael Cragg  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

### Time for Compliance

**Section 10(1)** provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

**Section 10(2)** provides that –

“Where the authority has given a fees notice to the applicant and the fee paid is in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.”

**Section 10(3)** provides that –

“If, and to the extent that –

- (a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or
- (b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.”

**Section 10(4)** provides that –

“The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with the regulations.”

**Section 10(5)** provides that –

“Regulations under subsection (4) may –

- (a) prescribe different days in relation to different cases, and
- (b) confer a discretion on the Commissioner.”

**Section 10(6)** provides that –

“In this section –



“the date of receipt” means –

- (a) the day on which the public authority receives the request for information, or
- (b) if later, the day on which it receives the information referred to in section 1(3);

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”

### **Refusal of Request**

**Section 17(1)** provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.”

**Section 17(2)** states –

“Where–

- (a) in relation to any request for information, a public authority is, as respects any information, relying on a claim-
  - (i) that any provision of part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or
  - (ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and
- (b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached."

**Section 17(3)** provides that -

"A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming -

(a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or

(b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information."

**Section 17(4)** provides that -

"A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.

**Section 17(5)** provides that –

"A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact."

**Section 17(6)** provides that –

"Subsection (5) does not apply where –

- (a) the public authority is relying on a claim that section 14 applies,
- (b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and

- (c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request."

**Section 17(7)** provides that –

"A notice under section (1), (3) or (5) must –

- (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and
- (b) contain particulars of the right conferred by section 50."

### **Information Accessible by other Means**

**Section 21(1)** provides that –

"Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information."

**Section 21(2)** provides that –

"For the purposes of subsection (1)-

- (a) information may be reasonably accessible to the applicant even though it is accessible only on payment, and
- (b) information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment."

**Section 21(3)** provides that –

"For the purposes of subsection (1), information which is held by a public authority and does not fall within subsection (2)(b) is not to be regarded as reasonably accessible to the applicant merely because the information is available from the public authority itself on request, unless the information is made available in accordance with the authority's publication scheme and any payment required is specified in, or determined in accordance with, the scheme."